

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN D. PERKEY and, :  
THERESA M. PERKEY, :  
Plaintiffs :  
v. :  
: Civil Action No. 1:CV-00-1639  
RELIABLE CARRIERS, INC., :  
DANIEL JOSEPH BEMBEN and :  
KENT, :  
Defendants :  
:

FILED  
HARRISBURG, PA  
APR 30 2003

MARY E. D'AMICO  
Per 

**MOTION FOR LEAVE OF COURT TO RESPOND TO  
DEFENDANTS', RELIABLE CARRIERS, INC. AND DANIEL JOSEPH  
BEMBEN, MOTION FOR SUMMARY JUDGMENT**

AND NOW COMES, ABF Freight Systems, Inc. (ABF), as self-insured and subrogee, by its attorney, Michael A. Farrell, Esquire, Farrell & Ricci, P.C., and represents to this Honorable Court as follows:

1. In a Complaint filed September 14, 2000, John D. Perkey (Plaintiff), alleged that he sustained an injury on September 15, 1998. At the time of the

accident, Plaintiff was an employee of ABF, and said accidental injury arose out of and in the course of Plaintiff's employment. At the time of the accident, ABF was self-insured.

2. On September 15, 1998, Plaintiff and ABF were bound by and operating under the Pennsylvania Workers' Compensation Act.

3. Pursuant to the provisions of the Workers' Compensation Act, ABF paid \$179,731.58 in workers' compensation benefits arising out of the alleged accident of September 15, 1998.

4. On April 17, 2003, ABF filed a Motion to Intervene in these proceedings pursuant to Federal R.C.P. 24(b)(c). ABF was seeking to intervene in order to protect its subrogation interests under Section 319 of the Pennsylvania Workers' Compensation Act, 77 P.S. Sec. 671.

5. On April 15, 2003, Defendant filed a Motion for Summary Judgment seeking a setoff against any judgment for workers' compensation benefits previously received by Plaintiff. Defendant further asserted that ABF has precluded from intervention, as a matter of law, and that there was no subrogation interest to protect by operation of 40 P.S. Sec. 991.1817(a) and M.C.L.A. Sec. 500.7931.

6. Defendant's Motion for Summary Judgment raises the same legal question, upon which ABF's Petition for Intervention is based as ABF submits that

it is not a "insured" as that term is defined in M.C.L.A. Section 500.106 or 40 P.S. Section 991.802.

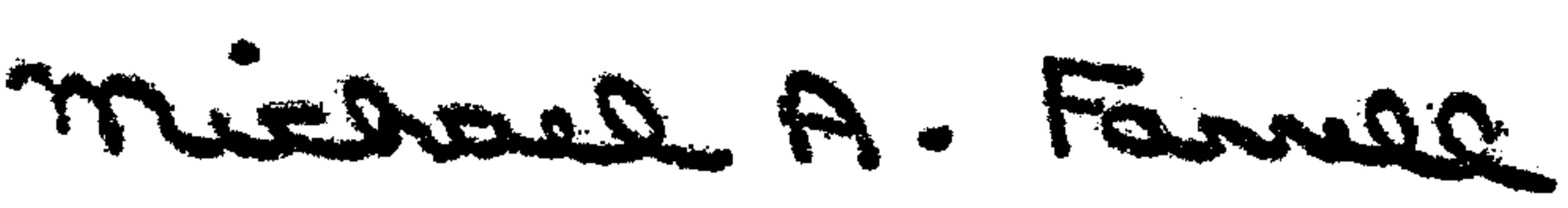
7. In the event that Defendants' Motion for Summary Judgment is granted, ABF's Petition to Intervene pursuant to Federal R.C.P. 24(b) will be moot as the right to subrogation would be extinguished. ABF submits that leave to respond to Defendants' Motion for Summary Judgment will not unduly delay or prejudice the rights of the original parties.

WHEREFORE, for all of the foregoing reasons, ABF respectfully requests that this Honorable Court grant ABF's Motion for Leave of Court to Respond to Defendants' Motion for Summary Judgment.

Respectfully submitted,

**FARRELL & RICCI, P.C.**

By:

  
Michael A. Farrell, Esquire  
Attorney ID No. 41067  
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Harrisburg, PA 17110  
717-230-9201  
(Counsel for Respondent,  
ABF Freight Systems, Inc.)

Date: April 30, 2003

**CERTIFICATE OF SERVICE**

I, Michael A. Farrell, Esquire, do hereby certify that I served a true and correct copy of a *Motion for Leave of Court to Respond to Defendants', Reliable Carriers, Inc. and Daniel Joseph Bemben, Motion for Summary Judgment* on this 30<sup>th</sup> day of April, 2003, by depositing it in the United States mail, postage prepaid and addressed as follows:

**HAND-DELIVERED: United States District Court  
Middle District of Pennsylvania**  
Federal Building  
228 Walnut Street  
Harrisburg, PA 17108

**Marcus A. McKnight, III, Esquire**  
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(Attorneys for Reliable Carriers and Daniel Bemben)

By: *Michael A. Farrell*

Michael A. Farrell, Esquire